

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 14, 2007, under the applicable Executive Order¹ and Department of Defense (DoD) Directive (Directive),² DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Adjudicative Guideline B (Foreign Influence), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter.³ With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Guidelines. Applicant’s answer to the SOR was undated, and it was received by DoD on July 5, 2007. In her answer, Applicant requested that her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on August 23, 2007. The FORM contained documents identified as Items 1 through 6. By letter dated August 27, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on August 30, 2007. She timely filed additional information within the required time period. Department Counsel did not object to the admission of Applicant’s additional filing. On September 26, 2007, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct under revised adjudicative Guideline B, Foreign Influence. (SOR ¶¶ 1.a. through 1.c., Item 1.) Applicant admitted all three allegations. (Item 4.) Her admissions are admitted herein as findings of fact.

_____ Applicant is 50 years old and employed by a defense contractor as a software engineer and web developer. She was born in the People’s Republic of China (PRC) and became a U.S. citizen in 2001. Applicant’s husband was also born in the PRC and became a U.S. citizen in 1999. The couple was married in the PRC in 1983. In June 1999, Applicant earned a master’s degree from a U.S. university. (Item 6; Applicant’s response to FORM.)

Applicant was raised by her grandparents in the northeastern part of the PRC until she was 14 years old. The record indicates she resided with her parents until finishing high school. She attended college in the PRC and visited her parents and family members during school vacations and on holidays. Seventeen years ago, when she was approximately 33 years old, she immigrated to the U.S. from the PRC. Applicant asserts she does not have a close relationship with her parents, who are citizens and residents of the PRC. She also asserts her two siblings, who are citizens and residents of the PRC, work for private companies and have no relationships with the government of the PRC. (Applicant’s response to FORM; Item 6.)

From approximately 1980 to 1983, Applicant’s father was employed as an official by the

¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

²Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

government of the PRC. He has been retired for approximately 25 years. (Item 4; Item 5 at 3; Applicant's response to FORM.)

In 2002, Applicant traveled to the PRC to attend her grandmother's funeral. She traveled again to the PRC in 2002 to visit her father, who had suffered a heart attack. In 2004, she traveled to the PRC for her father's 80th birthday celebration. Applicant telephones her family members in the PRC approximately every one or two months. (Applicant's response to FORM; Item 5.)

Applicant is highly respected by her employer, who rated her job performance from June 2005 to May 2006 as "Outstanding" in most categories. (Applicant's response to FORM.)

With the SOR, the Government provided seven official U.S. publications describing the economic, political and intelligence activities of the PRC. The Government also provided these documents to Applicant and requested that the administrative judge admit the documents to the record in this case and take administrative notice of specific facts within those documents. I have admitted the proffered official documents to the record, and I take administrative notice of the following facts found therein:

The PRC, which has a population of over one billion people, is ruled by an authoritarian government dominated by the Chinese Communist Party. The U.S. and the PRC disagree on the status of Taiwan, and the PRC continues to resist what it considers to be superpower dominance by the United States.⁴

The Intelligence Threat Handbook identifies PRC intelligence activities toward the United States as follows: "The United States is a primary intelligence target of China because of the U.S. role as a global superpower; its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by the PRC."⁵

The U.S. - China Economic and Security Review Commission identified between 2,000 and 3,00 Chinese front companies operating in the United States to gather secret or proprietary information. Additionally, the PRC "often requests or requires its citizens who are studying or working in places where they have access to cutting-edge research activities or to technology development and application to obtain whatever information about those activities they can obtain and provide the information to the Chinese government."⁶

The Commission Report also made this key finding: "China makes a concerted effort to modernize its military by obtaining military-related systems and technologies from other countries,

⁴U.S. Department of State, *Background Note: China*, dated August 2007 (Background Note on China) at 1-2, 14-16, 17-22.)

⁵Interagency OPSEC Support Staff, *Intelligence Threat Handbook* [Unclassified/For Official Use Only], dated June 2004, (Intelligence Threat Handbook), at 17.

⁶U.S. - China Economic and Security Review Commission, *2006 Report to Congress of the U.S. - China Economic and Security Review Commission*, dated November 2006, at 138.

particularly Russia. China used legal and illegal means, including espionage, to obtain such technologies from the United States.”⁷

CONCLUSIONS

Guideline B - Foreign Influence

The Foreign Influence Guideline identifies the following security concern: *Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.*

This case requires the recognition that the PRC is a totalitarian government that actively targets U.S. citizens of Chinese ancestry to request or require that they obtain information about cutting-edge research activities or technology development and provide that information to the Chinese government. Moreover, the Chinese government uses legal and illegal means, including espionage, to obtain information on technology development from the United States.

Applicant admitted the three Guideline B allegations in the SOR. The facts in this case raise possible security concerns under three Guideline B disqualifying conditions. Applicant has contacts with four family members who are residents and citizens of the PRC, a country that is known to exploit, pressure, or coerce U.S. citizens of Chinese ancestry to provide secret or proprietary information to the PRC government. Her father, now retired, held an official position with the PRC government. These facts raise concerns under Disqualifying Condition (DC) 7(a) of Guideline B.⁸

Applicant’s mother, father, sister and brother are citizens and residents of the PRC. Because the PRC is a totalitarian state with many political and security interests antithetical to the U.S., these facts raise security concerns under DC 7(b) of Guideline B.⁹

Since becoming a U.S. citizen in 2001, Applicant traveled to the PRC three times: twice in 2002 and once in 2004. Even though her travels to the PRC were for the purpose of visiting family members, her presence in the PRC made her and her family members potentially vulnerable to exploitation, pressure, or coercion by the PRC government, which actively seeks to obtain classified

⁷*Id.* at 139.

⁸DC 7(a) reads: “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”

⁹DC 7(b) reads: “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.”

or proprietary information from U.S. citizens of Chinese ancestry who work for U.S. government contractors. These facts raise concerns under DC 7(i) of Guideline B.¹⁰

There are several Mitigating Conditions (MC) that potentially apply to the disqualifying conditions raised by the facts in this case. Applicant could mitigate Guideline B security concerns if she could credibly demonstrate that *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.* MC 8(a). She could also mitigate Guideline B security concerns if the facts credibly show *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest* (MC 8(b)); or *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* (MC 8(c)); or *the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority* (MC 8(d)).

Applicant's foreign contacts with her family members in the PRC and her travel to the PRC were not the result of U.S. government business, and nothing in the record suggests they were approved by a cognizant security authority. Applicant's contacts with her parents and siblings in the PRC are frequent, on-going, and familial. Her relationship with them is one of loyalty and obligation, raising the concern that these relationships create a risk for foreign influence or exploitation. Applicant failed to rebut a potentially disqualifying security concern by providing credible evidence that it is unlikely she would be placed in a position of having to choose between the interests of a foreign government and the interests of the U.S. She also failed to rebut the potentially disqualifying security concern by providing credible evidence that she was not vulnerable to a conflict of interest because of her sense of loyalty to her family members in the PRC was minimal and she could be expected to resolve any conflict of interest in favor of the U.S. interest. Accordingly, I conclude that MCs 8(a), 8(b), 8(c), and 8(d) are inapplicable.

Whole Person Analysis

The adjudicative process, as defined at E2.2. of the Directive, is "the careful weighing of a number of variables known as the whole person concept" and further requires the consideration of reliable information, favorable and unfavorable, about a person's past and present conduct. The following factors should be considered in evaluating the relevance of an individual's conduct under the whole person concept: "the nature, extent and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence." (See Directive, E2.2.1.1. to E2.2.1.9.)

¹⁰DC 7(i) reads: "conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country."

Applicant is 50 years old and has resided in the U.S. for approximately 17 years. In 1999, she earned a master's degree from a U.S. university. She became a U.S. citizen in 2001. The record is silent regarding the nature and extent of Applicant's education, work experience and social and business contacts in the PRC from the time of her graduation from high school to her emigration at the approximate age of 33 years.

Applicant is a valued employee of a U.S. government contractor. She is also an honorable family member who seeks to maintain contact with her parents and siblings who are citizens and residents of the PRC. In carrying out her family responsibilities, she has made choices to travel to the PRC, and these choices could also make her vulnerable to coercion, exploitation, or pressure and could cause the future compromise of classified information. I have carefully reviewed the administrative record, Applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guideline B, and I have evaluated Applicant's conduct in light of the whole person concept identified at ¶ E2.2. of Enclosure 2 of the Directive. After doing so, I conclude allegations 1.a. through 1.c. of the SOR against Applicant.

Nothing in Applicant's answers to the Guideline B allegations in the SOR or in the administrative record suggested she was not a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: **AGAINST APPLICANT**

Subparagraph 1.a.: **Against Applicant**

Subparagraph 1.b.: **Against Applicant**

Subparagraph 1.c.: **Against Applicant**

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony
Administrative Judge

